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Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 2, 2017					

LAW512 – Commercial and Corporate Law for Managers	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is a RESTRICTED OPEN BOOK examination		
Any non-programmable calculator is permitted		
No handwritten notes are permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
No additional printed material is permitted	1 x 20 Page Book Case/Precedents List	

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Section A

Short Answer Questions

Total Marks for this section: 30 marks

Please note: Identify and discuss all the relevant issues and refer to cases and/or legislation (see case list provided) to justify or support your answers.

Question 1 [Total 15 marks]

Rahul runs his own interior decorating company (Rahul's Decorating Pty Ltd) as a single director company. He expanded the business 12 months ago by borrowing \$200,000 from the Australian Industrial Bank Ltd ('AIB'), to enable him to employ two assistant decorators and set up a new office in Cavanagh Street, Darwin.

Rahul very recently learned that one of the assistant decorators has, without permission, taken (copied) from the office computer system a decoration catalogue previously written entirely by Rahul. The catalogue contains written descriptions and photographs of various styles of room and office decorations. The assistant decorator then used the catalogue to perform secret paid jobs for private clients on the side. Rahul dismissed the assistant decorator immediately, but the assistant decorator has threatened to challenge the dismissal as 'unfair'. Rahul has also now found that his operational costs and debts are higher than in-coming revenue. He partly blames the conduct of his assistant decorator for this state of affairs. A number of creditors are now pressuring Rahul for immediate payment. Rahul is a single parent (with one daughter) and owns a house that is mortgaged to AIB (used to secure the \$200,000 loan). An amount of \$135,000 is still owing to AIB. In order to protect his assets, Rahul has the idea that his house should be transferred into his daughter's name and wants to sign legal papers so that the house is held on trust for her until she reaches the age of twenty-one. She is now thirteen.

- (a) Did Rahul breach employment law by immediately dismissing the assistant interior decorator? What else could Rahul do about the assistant decorator's use of the catalogue? Explain your answers by referring to employment law and intellectual property law.

(10 marks)

- (b) Can Rahul transfer the house to his daughter in this way? Provide a legal explanation as to why or why not.

(5 marks)

Question 2 [Total 15 marks]

The Australian Competition and Consumer Commission (ACCC) is about to commence legal proceedings against Mobileworld Operating Systems Pty Ltd (trading as 'Crazy Js'). The ACCC alleges that 'Crazy Js' has engaged in misleading or deceptive conduct by representing in its promotional material that mobile phone handsets are available "free" or for "\$0". The ACCC claims that, in fact, consumers are required to pay for the handsets through higher call rates than those available on comparable mobile phone plans that do not include a handset.

Crazy Js' managing director recently said in a press release: *"We stand by our advertising and the value of our products... The complaint against us relates to ads that ran last year which are no longer running... but we are happy to work with the ACCC to correct any misunderstanding."*

- (a) Advise Crazy Js as to what arguments the ACCC's could make against it for breaches of the Australian Consumer Law (2010) and what defence arguments could it use.

(10 arks)

- (b) Is there any 'bait advertising' involved in this case? Justify your answer by referring to the relevant Australian Consumer Law.

(5 marks)

NB: Section B commences on the next page

Section B

Long Answer Questions

Total Marks for this section: 30 marks

Please note: Identify and discuss all the relevant issues and refer to cases and/or legislation (see case list provided) to justify or support your answers.

Question 3 [15 marks]

Asif drives a taxi for his uncle's taxi company. His shift starts at 12 midnight and it is common for him to receive radio calls giving instructions about where to collect passengers and where they are to be driven. One evening, Asif received such a radio message and was momentarily distracted as he was unfamiliar with the location and did not see a pedestrian who wandered onto the road in front of his taxi. He was not driving fast and it was a poorly lit street. The pedestrian was drunk. But Asif definitely ran over him. An ambulance was immediately called and the pedestrian suffered 3 broken ribs and a broken leg in addition to deep bruising on his body.

Can the pedestrian sue Asif in tort law for negligence? Can Asif argue that there is contributory negligence? In your legal opinion who is more likely to win this case and why? Use the relevant tort law cases to support your answers.

(15 Marks)

NB: Question 4 is on the next page

Question 4 [15 marks]

Jyoti recently commenced studies in Australia and wanted to purchase a new computer to help her with her course. She went into a computer shop to get some advice as to the best one to buy and the clever salesman persuaded her to buy the most expensive model in the shop even though he knew she probably didn't need it based on what she had told him. The cost of the computer was \$2,300 but when the salesman handed back her credit card receipt, it read "\$2,800", not \$2,300. The salesman immediately realised that Jyoti had paid \$500 too much but didn't notice. He made a decision on the spot not to draw this to her attention. When Jyoti got home, however, she realised she paid too much for the computer and telephoned the store to inquire why her receipt said \$2,800 when she understood the price was \$2,300. The manager answered the phone and said he would make inquiries and 'get back to her'. But he did not get back to her. The docket for the computer sale also contained the following clause: *"No warranty or condition implied by statute, common law, or otherwise is given as to fitness for purpose, quality or performance of the computer."* Until now, Jyoti was not aware of this clause until she got home.

Using contract law, was this a valid contract? Give your reasons why or why not. Can the exclusion clause have any effect? What would be a suitable remedy in this situation? Your answer must refer to relevant case law. (NB. You are not required to use Consumer Law in your answer).

(15 marks)

LAW512 Final Exam Reference List

Company Law

Corporations Act (2001)

Director's duties: ss.180-184; ss. 191-195 (disclosure requirements); s.95A (insolvency); s588G (director liability for insolvent trading), 588H (defences re. 588G claims); s.588FF (voidable transactions); s.727 (a disclosure document), s.710 (prospectus requirements)

Saloman v Saloman Co Ltd

Lee v Lee Air Farming

Cook v Deeks

Daniels v Anderson

ASIC v Adler

Consumer Law

Competition and Consumer Act (2010)

s.18 prohibition of misleading or deceptive conduct

s.29 the specific false representation provisions

s.35 the prohibition of 'bait advertising'

McWilliams Wines Pty Ltd v McDonalds Systems of Aust Pty Ltd

ACCC v Coles Supermarkets

ACCC v TPG Internet Pty Ltd

Nationwide News v ACCC

Reardon v Morely Ford Pty Ltd

Walplan Pty Ltd v Wallace

Enforcement and remedies: s.151-168 (criminal); s.224 (pecuniary penalty); s.232 (injunction); s.236 (damages); ss.237, 243 (other orders - such as rescission or variation of contracts).

Contract

Carlill v Carbolic Smoke Ball Co

Dunlop Pneumatic Tyre v Selfridge

Brambles v Bathurst Council

Felthouse v Bindley

Chappell & Co. v Nestle

David Securities v Commonwealth Bank

Toll (FGCT) Pty Ltd v Alphapharm

Amadio v Commercial Bank of Aust.

Void/Voidable transactions

Employment Law

Workplace Relations Act (1996)

NSW v Commonwealth (Work Choices case) (2006)

Fair Work Act

FWO v Bound for Glory Enterprises Pty Ltd [2014]

Fair Work Commission

Hollis v Vabu

Lawrence v Coal & Allied Mining (2012)

Intellectual Property

Copyright Act 1968

Pacific Film Laboratories v Commissioner of Taxation (1970)

University of London Press v University Tutorial Press [1916]

Desktop Marketing v Telstra (2002)

Ice TV v Channel Nine Network (2009)

Burge v Swarbrick (2007)

Donoghue v Allied Newspapers [1938]

Statutory defences: ss40-43

Commonwealth v John Fairfax & Sons Ltd (1980)

Remedies for infringement: ss115-116 (injunction, damages, account of profits, additional damages).

Tort Law

Donoghue v Stevenson

CAL No. 14 Pty Ltd v Motor Accidents Board (2009)

Perre v Apand

Bolton v Stone

Strong v Woolworths

The Wagon Mound No.1 case (remoteness of damage)

Defences: Contributory negligence; voluntary assumption of risk

Allen v Chadwick (2015)

Agar v Hyde; Green v Country RFL

Hollis v Vabu; Deatons Pty Ltd v Flew (vicarious liability)